

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT,**

Plaintiff,

v.

**DELL TECHNOLOGIES INC.,
DELL INC., EMC CORPORATION,
AND VMWARE, INC.,**

Defendants.

Civil Action No.: 6:20-cv-00480-ADA-DTG
Civil Action No.: 6:20-cv-00481-ADA-DTG
Civil Action No.: 6:20-cv-00486-ADA-DTG

JURY TRIAL DEMANDED

PUBLIC VERSION

**PLAINTIFF’S OBJECTIONS TO AND APPEAL FROM MAGISTRATE
JUDGE’S REPORT AND RECOMMENDATION GRANTING IN PART
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT OF
NON-INFRINGEMENT OF U.S. PATENT 7,092,360**

Plaintiff respectfully objects to and appeals Magistrate Judge Gilliland’s Report and Recommendation (“R&R”) granting in part Defendants’ Motion for Summary Judgment of Non-Infringement of U.S. Patent 7,092,360 (the “Motion”), as it contains erroneous findings of fact and contradicts the pertinent law and procedures.¹ *See, e.g., Baylor Health Care Sys. v. Equitable Plan Servs.*, 955 F. Supp. 2d 678, 689 (N.D. Tex. 2013); *see also* Fed. R. Civ. P. 72(a) (“The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.”).

A. There is a Genuine Issue of Material Fact Regarding Whether [REDACTED]

The R&R is incorrect, as Dr. McClellan clearly [REDACTED]

[REDACTED]

¹ The Court heard Defendants’ Motion on the papers, and there were no findings of fact on the record.

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
PUBLIC VERSION

[REDACTED]

[REDACTED] Therefore, Defendants’ contention that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dr. McClellan also identified [REDACTED]

[REDACTED]

[REDACTED]

Further, Dr. McClellan identified v [REDACTED]

[REDACTED] Dr. McClellan explained, [REDACTED]

[REDACTED]

[REDACTED]

Dr. McClellan also explained [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As another example, Dr. McClellan identified [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dr. McClellan also explained [REDACTED]

[REDACTED]

[REDACTED]

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
PUBLIC VERSION

[REDACTED]
[REDACTED]
[REDACTED] Thus, there is a material issue of fact, and Defendants’ Motion should have been denied.

B. There is a Genuine Dispute of Material Fact as to Whether [REDACTED]

The Court erroneously found that Brazos failed to show that [REDACTED]

[REDACTED] However, Dr. McClellan identified [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Dr. McClellan also identifies [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Thus, there is a material issue of fact.

For these reasons, Plaintiff respectfully requests that this Court sustain Plaintiff’s objections and vacate Magistrate Judge Gilliland’s Report and Recommendation granting in part Defendants’ Motion for Summary Judgment of Non-Infringement of U.S. Patent 7,092,360.

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
PUBLIC VERSION

Dated: February 13, 2023

RESPECTFULLY SUBMITTED,

By: /s/ Jonathan K. Waldrop
Jonathan K. Waldrop (CA Bar No. 297903)
(Admitted in this District)
jwaldrop@kasowitz.com
Darcy L. Jones (CA Bar No. 309474)
(Admitted in this District)
djones@kasowitz.com
Marcus A. Barber (CA Bar No. 307361)
(Admitted in this District)
mbarber@kasowitz.com
John W. Downing (CA Bar No. 252850)
(Admitted in this District)
jdowning@kasowitz.com
Heather S. Kim (CA Bar No. 277686)
(Admitted in this District)
hkim@kasowitz.com
ThucMinh Nguyen (CA Bar No. 304382)
(Admitted in this District)
tnguyen@kasowitz.com
Chen Jia (CA Bar No. 281470)
(Admitted in this District)
cjia@kasowitz.com
KASOWITZ BENSON TORRES LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, California 94065
Telephone: (650) 453-5170
Facsimile: (650) 453-5171
Paul G. Williams (GA Bar No. 764925)
(Admitted in this District)
pwilliams@kasowitz.com
KASOWITZ BENSON TORRES LLP
1230 Peachtree Street N.E., Suite 2445
Atlanta, Georgia 30309
Telephone: (404) 260-6080
Facsimile: (404) 260-6081
Hershy Stern (NY Bar No. 4631024)
(Admitted *pro hac vice*)
hstern@kasowitz.com
Howard L. Bressler (NY Bar No. 2487379)
(Admitted *pro hac vice*)
hbressler@kasowitz.com
Joshua A. Whitehill (NY Bar No. 4766473)
(Admitted *pro hac vice*)
jwhitehill@kasowitz.com

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
PUBLIC VERSION

Julianne Laporte (NY Bar No. 5547906)
(Admitted *pro hac vice*)
jlaporte@kasowitz.com
Noah P. Dorman (DC Bar No. 1779821)
(Admitted *pro hac vice*)
ndorman@kasowitz.com
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, NY 10019
Telephone: (212) 506-1700
Facsimile: (212) 506-1800

Mark D. Siegmund (TX Bar No. 24117055)
mark@swclaw.com
Craig D. Cherry (TX Bar No. 24012419)
craig@swclaw.com
Justin W. Allen (TX Bar No. 24081977)
justin@swclaw.com
Melissa S. Ruiz (TX Bar No. 24128097)
melissa@swclaw.com
**STECKLER WAYNE CHERRY & LOVE
PLLC**
8416 Old McGregor Road
Waco, TX 76712
Telephone: (254) 651-3690
Facsimile: (254) 651-3689

Gregory P. Love (TX Bar No. 24013060)
greg@swclaw.com
**STECKLER WAYNE CHERRY & LOVE
PLLC**
107 East Main Street
Henderson, TX 75652
Telephone: (903) 212-4444
Facsimile: (903) 392-2267

Attorneys for Plaintiff
WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served or delivered electronically via email to all counsel of record, on this 13th day of February, 2023.

/s/ Jonathan K. Waldrop
Jonathan K. Waldrop